

REMARKS

In the Office Action dated April 9, 2008, claims 1, 2, 12-15, 18, 20, 22-24, 28, 30-32, 36, 37, 39-46 and 49 were rejected under 35 U.S.C. §102(b) as being anticipated by Jampolsky. This rejection is respectfully traversed for the following reasons.

In the subject matter disclosed and claimed in the present application, the method and apparatus are for the purpose of correcting imbalances that exist in binaural hearing aid systems, wherein a first hearing aid device is worn at or in one ear of a patient, and a second hearing aid device is worn at or in the other ear of the patient. It is almost impossible to identically manufacture the two hearing aids, and therefore, due to tolerances in the electrical components thereof, it is almost always the case that the signal path through one of the hearing aids does not precisely match the signal path through the other hearing aid. This can create an uncomfortable situation for the patient, and in some instances may even result in an inability to correct the hearing impairment of the patient in an appropriate manner.

In the method and apparatus disclosed and claimed in the present application, this problem is solved by making a measurement in one of the hearing aids of an attribute that affects the signal path in that hearing aid, and transferring information from the hearing aid in which the attribute was measured to the other hearing aid in the binaural system, and then adapting the signal path in the other hearing aid so as to match the signal path in the hearing aid in which the measurement was made.

Such a method and apparatus are not disclosed or suggested in the Jampolsky reference.

First and foremost, the Jampolsky reference is only an audiometer, that is for the purpose of measuring a *physiological* imbalance that exists in the respective years of a patient. There is no measurement of an attribute of a signal path in the hearing aid device that is undertaken in the Jampolsky reference. Since no such measurement is made, there is no teaching Jampolsky (because there is no need to do so) of transmitting information corresponding to the measurement that is made in one hearing aid to the other hearing aid in the binaural hearing aid system.

In the Jampolsky reference, there is a disclosure to adjust a variable time delay, so that the delay of the hearing aid system is measured, as explained in column 8, beginning at line 53, and column 7, beginning at line 55 of Jampolsky. The measurements are relatively complex and are not automated, and external equipment is required, rather than making a measurement in a hearing aid device.

In the Jampolsky system, the measured time delay of the biological or physiological hearing system is forwarded to the electronic hearing aid system, as explained at column 10, beginning at line 44. There is no teaching or suggestion in the Jampolsky reference to compensate for differences in the signal transit time, or any other attribute, of the respective hearing aids in a binaural system. In fact, the opposite is true, because in the Jampolsky system if a biological or physiological imbalance is detected, the hearing aids will intentionally be made to operate in an unmatched manner, so as to compensate for this imbalance. This is precisely the opposite of the goal of the method and apparatus disclosed and claimed in the present application.

As noted above, in the Jampolsky reference, “imbalance” or “mis-matching” refers to the physiological or biological hearing capability, and does not refer to attributes of the electronic hearing aids.

Consistent with the above discussion, each of the independent claims of the present application has been amended to state that the attribute of the hearing aid in question is measured (as opposed to being “determined” as in the previous claim language). This is supported in the specification as originally filed in paragraph [0024].

Each of the independent claims also has been amended to make clear that the measurement is used to match the transit times, or some other operating characteristic or attribute, of the two hearing aids of the binaural system, as a result of transmitting the measurement from the hearing aid in which the measurement was made to the other hearing aid in the binaural system.

Each of the independent claims also has been amended to distinguish the claims over the audiometer disclosed in the Jampolsky reference by making clear that the signal processor generates a processed signal that compensates for a hearing impairment of the patient. This is in contrast to the signal process (which does not take place in the hearing aids themselves) in Jampolsky et al, which is for the purpose of identifying the aforementioned physiological imbalance (which is not necessarily a hearing “impairment”).

Applicants therefore respectfully submit that the none of the independent claims of the application, nor any of the claims depending therefrom, is anticipated by Jampolsky.

Claims 3, 4, 16, 25 and 34 were rejected under 35 U.S.C. §103(a) as being unpatentable over Jampolsky. Claims 5, 6, 11, 17, 21, 33 and 38 were rejected under 35 U.S.C. §103(a) as being unpatentable over Jampolsky in view of Van Schaik. Claims 7, 8, 19, 27 and 47 were rejected under 35 U.S.C. §103(a) as being unpatentable over Jampolsky in view of Westermann. Claims 9 and 35 were rejected under 35 U.S.C. §103(a) as being unpatentable over Jampolsky in view of Andersen et al. Claim 10 was rejected under 35 U.S.C. §103(a) as being unpatentable over Jampolsky in view of Lindemann. Claim 48 was rejected under 35 U.S.C. §103(a) as being unpatentable over Jampolsky in view of Westermann and further in view of Weinfurtner et al.

The above arguments regarding the anticipation rejection based on Jampolsky et al are equally applicable to these arguments under 35 U.S.C. §103(a). Even if the Examiner is correct regarding the further teachings of the Jampolsky reference itself, for the teachings of the various secondary references, modifying the Jampolsky reference in view of those teachings still would not result in the subject matter of any of the aforementioned dependent claims, for the reasons noted above in connection with the arguments regarding the independent claims.

All claims of the application are therefore submitted to be in condition for allowance, and early reconsideration of the application is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees which may be required, or to credit any overpayment to account No. 501519.

Submitted by,

 (Reg. 28,982)

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